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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/787,409	09/17/2001	Jean-Louis Gueret	204296USOPCT	6084
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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER DOAN, ROBYN KIEU	
			ART UNIT 3732	PAPER NUMBER
			NOTIFICATION DATE 06/13/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 09/787,409	Applicant(s) GUERET, JEAN-LOUIS	
	Examiner Robyn Doan	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Upon further consideration of the references cited in the IDS, the indicated allowability of claims 30-32, 36, 38 and 43 is withdrawn herewith. Rejections based on the cited reference(s) follow.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 43 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Laguionie (U.S. Pat. # 1,833,293).

With regard to claim 43, Laguionie discloses a comb (figs. 1-4) inherently for applying a product to keratinous fibers including an arrangement of teeth (see fig. 3) capable of applying a product, wherein the arrangement of teeth being obtained by at least two separate parts (1, 2) along an axis, wherein as the parts being assembled, a layer of absorbent material (3) being inserted between two parts. In regard to claim 44, the absorbent material being made of open cell foam (sponge, col. 2, lines 58-61).

Claims 66, 68, 69 are rejected under 35 U.S.C. 102(b) as being anticipated by French Patent '805 (IDS cited reference).

With regard to claim 69, FR '805 discloses a cosmetic applicator (fig. 1) comprising a first part (1) with a first elongate base (5) along the length of which is connected a first succession of teeth (3), a second part (2) with a second elongated base (9) along the length of which is connected a second succession of teeth (4), wherein the first and second elongated bases being in contact with each other along a plane surface (Applicant is noted that base 5 of first part having a plane surface and base 9 contacts base 5 at 14 and 15 of the plane surface of base 5). With regard to claims 66, 68, wherein the first and second bases (5, 9) are joined together pivotally by a hinge (see figs. 5, 6) and are secured on a same wand (7).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24, 25, 28-34, 36-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petroczky (U.S. Pat. # 3,669,130) in view of Koppel (U.S. Pat. # 5,318,051).

With regard to claims 24, 25, 28-34, 36-39, Petroczky discloses a comb (figs. 2, 4) inherently for applying a product to keratinous fibers comprising an arrangement of succession of teeth (30, 32) configured to form in at least one row connected to a base (34) extending along an axis, the teeth having free ends and capable of applying the

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product, wherein some of said teeth (30) inclined in a first direction while other teeth (32) inclined in a second direction. Petroczky fails to show the teeth being obtained of at least two separate thermoplastic parts and joined together pivotally by a film hinge. Koppel discloses comb (figs. 1-4) comprising an arrangement of succession of teeth (12), wherein the arrangement of teeth being obtained by at least two separate parts (14, 16 fig. 1) and joined together pivotally by a film hinge (at 36). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the teaching of making the combs with two separate parts in the comb of Petroczky in order to better clean the gap between the teeth. And it would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the thermoplastic material for the parts, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. In regard to claims 40, 41, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the different material for each of the parts and the thermoplastic comprises Teflon, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Claims 24-35, 42, 47-51, 60, 61, 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over French Patent '805 (IDS cited reference) in view of DE '273 (IDS cited reference).

With regard to claims 24-35, 47-51, 60, 61, 67, FR '805 discloses a cosmetic comb (fig. 1) comprising a first part (1) with a first elongate base (5) along the length of which is connected a first succession of teeth (3), a second part (2) with a second elongated base (9) along the length of which is connected a second succession of teeth (4), wherein the parts are connected to each other by snap fastening means (14, 17, 15, 16); the comb further having a grasping element (7). FR '805 fails to show the teeth of both parts being offset from each other, wherein, when viewed from the side, the two consecutive teeth form between a notch. DE '273 discloses a cosmetic applicator having a plurality of teeth (fig. 5), wherein at least two consecutive teeth being offset from each other and forming a notch. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the offset teeth as taught by DE '273 into the FR '805 in order to improve the purpose of applying cosmetic to the eyelashes. In regard to claim 42, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the flocking material over the parts, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Claims 45, 46, 52-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR '805 in view of DE '273 as applied to claim 24 above, and further in view of Montgomery '870 (IDS cited reference).

With regard to claims 45, 46, 52-54, FR '805 in view of DE '273 disclose the essential claimed invention except for a container for container a reserve product, a the container being fitted with a wringing-out member. Montgomery discloses a mascara device (fig. 2) comprising a container (13) and a wringing-out member (49) is fitted with the container. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the container with the wringing-out as taught by Montgomery '870 into the device of FR '805 in view of DE '273 in order to contain the product.

Claims 55-59, 62-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR '805 in view of DE '273 as applied to claim 24 above, and further in view of Miraglia (U.S. Pat. # 5,709,230).

With regard to claims 55-59, 62-65, FR '805 in view of DE '273 disclose the essential claimed invention except for a hollow wand, and the first and second bases forming a cross section and wherein the cross section being cylindrical. Miraglia discloses a comb device (fig. 1) comprising a hollow wand (28) in order to fit a base (27) of the comb. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the hollow wand as taught by Miraglia into the device of FR '805 in view of DE '273 in order to support the base of the comb.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Robyn Doan
Primary Examiner
Art Unit 3732